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No. 99-680

In the Supreme Court of the United States

MARIA HSIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a prosecution for causing political committees to submit materially false statements to the Federal Election Commission, in violation of 18 U.S.C. 1001 and 2(b), requires proof that the defendant knew her conduct was unlawful.

2. Whether conduct that violates provisions of the Federal Election Campaign Act of 1971 (FECA), 2 U.S.C. 431 *et seq.*, must be prosecuted under FECA's criminal enforcement provisions, or may be prosecuted under general federal criminal provisions in Title 18 of the United States Code.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-19a) is reported at 176 F.3d 517. The opinions of the district court (Pet. App. 20a-52a and 53a-113a) are reported at 24 F. Supp. 2d 14 and 24 F. Supp. 2d 33.

JURISDICTION

The judgment of the court of appeals was entered on May 18, 1999. A petition for rehearing was denied on August 2, 1999 (Pet. App. 117a). The petition for a writ of certiorari was filed on October 20, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

A federal grand jury in the District of Columbia indicted petitioner on, *inter alia*, five counts of causing political committees to submit materially false statements to the Federal Election Commission (FEC), in violation of 18 U.S.C. 1001 and 2(b). The district court dismissed the false statement counts, and the court of appeals reversed. Pet. App. 1a-19a.

1. a. The Federal Election Campaign Act of 1971 (FECA), 2 U.S.C. 431 *et seq.*, imposes limits on contributions to candidates for federal office. Individuals may contribute no more than $1000 to any candidate with respect to any election, and may contribute no more than $25,000 to political committees in any calendar year. 2 U.S.C. 441a(a)(1)(A) and (C); 2 U.S.C. 441a(a)(3). Corporations are prohibited altogether from making contributions in connection with federal elections. 2 U.S.C. 441b. To ensure that the Act's contribution limitations are not easily evaded, FECA provides that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another." 2 U.S.C. 441f. Further, the Act requires political committees to keep detailed records of their financial activities, and to file periodic reports with the FEC disclosing, *inter alia*, the name, mailing address, occupation, and employer of each "person who makes a contribution" to the committee and whose aggregate annual contributions exceed $200. 2 U.S.C. 431(13), 434(b)(3)(A). Pet. App. 2a-3a, 9a; Gov't C.A. Br. 3-4.

The FEC administers FECA and has exclusive jurisdiction over civil enforcement. 2 U.S.C. 437c(b). The

Act gives the FEC the power to assess civil penalties for any "violation" of the Act, and enhanced penalties for a "knowing and willful" violation. 2 U.S.C. 437g(a). FECA also provides criminal penalties for certain "knowing[] and willful[]" violations, up to a maximum of one year imprisonment, a fine, or both. 2 U.S.C. 437g(d)(1)(A). Gov't C.A. Br. 5.

b. Petitioner is an immigration consultant in the Los Angeles area. The International Buddhist Progress Society (IBPS), which operates the Hsi Lai Temple in Hacienda Heights, California, is a tax-exempt religious organization incorporated in California and prohibited from participating in political campaigns under 26 U.S.C. 501(c)(3). The indictment alleges that petitioner funneled money from IBPS and others into various political campaigns by using straw contributors. Petitioner either would find and solicit individuals to serve as nominal contributors or ask others (including IBPS) to do so. Some of the conduits were nuns, monks, and volunteers from IBPS, while others were friends and associates of petitioner. In one instance, petitioner herself acted as a straw contributor. The nominal contributors were reimbursed in full by the actual contributors, including IBPS. The indictment alleges that petitioner thereby caused IBPS and others to make illegal contributions to political campaigns. Pet. App. 3a; Gov't C.A. Br. 6-8; Indictment ¶¶ 1, 2, 20-21, 27-28, 31-33, 36-39, 40(t)-(v), (y)-(bb), (ff)-(pp); Bill of Particulars at 13-20.

Counts Two through Six of the Indictment charge that petitioner willfully caused the political committees that were the recipients of the conduit contributions to submit materially false statements to the FEC, in vio-

lation of 18 U.S.C. 1001 and 2(b).[1] The political committees filed reports listing the conduit contributions as being from their nominal sources, although the true source was either IBPS or petitioner's immigration clients. Pet. App. 4a; Gov't C.A. Br. 7-8.

2. The district court dismissed Counts Two through Six, the false statement counts. The court questioned whether the statements alleged in the indictment—the names of the "contributors" in the political committees' reports—could have been false, since, in the court's view, a report by a political committee that a particular individual is a contributor is false only if the committee knew that the named individual was not the real contributor. Pet. App. 106a. The court also doubted that the indictment alleged conduct by petitioner "that could have 'caused' the political committees to file false statements," *id.* at 108a, in part on the ground that it believed that the First Amendment limited the extent to which ordinary theories of causation could be applied in the FECA context. *Id.* at 111a. Finally, the court noted that, in its view, showing that petitioner acted knowingly and willfully under Sections 1001 and 2(b) for causing a false statement to be made would require proof that she knew that her conduct was illegal—*i.e.*, that she "knew of the [political party] treasurers' reporting obligation, that [she] attempted to frustrate those obligations [*sic*], and that [she] knew [her] conduct was unlawful," Pet. App. 111a n.32, and the court stated that "[i]t is difficult, if not impossible * * * to imagine how the government possibly could prove"

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[1] Count One of the indictment charged petitioner with a conspiracy to defraud the FEC, in violation of 18 U.S.C. 371. Pet. App. 4a. That count was dismissed on the government's motion after the case was remanded to the district court.

those facts in this case. *Ibid.* Taking all of those factors together, the court determined that to hold that Sections 1001 and 2(b) proscribed the conduct alleged here would violate the Constitution. *Id.* at 113a. It accordingly dismissed the false statement counts.

In so doing, the court did not rely on petitioner's contention that the Federal Election Campaign Act "impliedly repeals the more general provisions of the Federal Criminal Code, specifically the false statements statute, 18 U.S.C. § 1001," and that this prosecution therefore must be brought either under FECA or not at all. Pet. App. 57a-72a. "[T]here is no inconsistency between FECA and the general criminal provisions employed by the government here," the court explained, "[n]or is there *any* indication in the language or legislative history of FECA to indicate that Congress intended the criminal provisions of the Act to displace any of the more general federal criminal provisions in Title 18 of the United States Code." *Id.* at 71a.

3. The court of appeals reversed. Pet. App. 1a-19a. The court held that the political committees' reports, by listing the names of the conduits—rather than the actual sources of the funds—as the contributors, contained "false" statements. *Id.* at 9a-12a. The court explained that FECA's "demand for identification of the 'person . . . who makes a contribution' is *not* a demand for a report on the person in whose name money is given; it refers to the true source of the money." *Id.* at 10a. The court of appeals also concluded that petitioner, by soliciting and in some cases relaying conduit contributions to the political committees, could have "caused" the filing of false statements and that therefore "the case fits comfortably within the clear and previously accepted scope of §§ 2(b) and 1001." *Id.* at 6a-8a. The court of appeals also rejected petitioner's

claim that First Amendment considerations required dismissal of the false statement counts. The court found that petitioner's conduct in soliciting unlawful conduit contributions did not involve constitutionally protected expression. *Id.* at 12a-13a.

With respect to the issues presented in the petition for certiorari, the court of appeals held that the government was not required to prove that petitioner knew her conduct was unlawful. The court reasoned that because petitioner was charged with causing a false statement offense, the government could establish the necessary mens rea "simply by proof (1) that [petitioner] knew that the statements to be made were false (the mens rea for the underlying offense—§ 1001) and (2) that [petitioner] intentionally caused such statements to be made by another (the additional mens rea for § 2(b))." Pet. App. 6a. The court accordingly held that "nothing in the indictment's allegations contradicts the government's capacity to prove the statutorily required mens rea." *Ibid.*

In addition, relying on the settled presumption against repeal by implication, the court of appeals agreed with the district court that FECA did not impliedly repeal Sections 1001 and 2, insofar as those provisions apply to the charge that an individual has caused false statements to be made by political committees. Pet. App. 13a-14a.[2] The court explained

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[2] The court of appeals also held that petitioner's cross-appeal of the district court's refusal to dismiss the conspiracy count (Count 1), was not properly before it. Pet. App. 14a-16a. Judge Rogers concurred in the court's decision not to entertain petitioner's cross-appeal, although she would not have reached all of the grounds addressed by the majority. *Id.* at 16a-19a. As noted above, see note 1, *supra*, the government voluntarily dismissed Count 1 after the court of appeals' decision in this case.

that it "will not find repeal [by implication] absent 'clear and manifest' evidence that it was intended." *Id.* at 13a. The court concluded that "[petitioner] presents no evidence of this sort." *Ibid.*

ARGUMENT

Petitioner contends that there is a conflict in the circuits that warrants further review of the court of appeals' holding that the government need not prove that petitioner knew her acts were unlawful in order to convict her on the false statement counts. Review of that narrow legal issue is not justified at this time and in any event would be premature in this case. Petitioner is scheduled to go to trial imminently, and petitioner's claim, which essentially involves the content of the instructions that will be given to the jury, would more appropriately be considered after any resulting conviction, when the issue will be presented in a concrete factual setting and with the benefit of specific instructions to review.

Petitioner also argues that the false statement counts must be dismissed because, in her view, the FECA is the exclusive means of enforcing compliance with the federal election laws. The decisions of both courts below rejecting petitioner's contention are correct, and there is no conflict with any decision of any other court of appeals. Further review of that question is therefore not warranted.

1. The court of appeals in this case held that, in a "conduit contribution" campaign finance case brought pursuant to Sections 1001 and 2(b), the government must prove that the defendant intentionally caused statements to be made that she knew to be false, but that the government need not prove that the defendant knew that her conduct was illegal. Petitioner contends

(Pet. 12-17) that proof of knowledge of illegality is required. Petitioner claims that the court of appeals' ruling conflicts with this Court's decision in *Ratzlaf* v. *United States*, 510 U.S. 135 (1994), and that of the Third Circuit in *United States* v. *Curran*, 20 F.3d 560 (1994).

a. The false statement statute, 18 U.S.C. 1001, requires proof that the defendant "knowingly and willfully" made a materially false statement, and that the statement was made in a matter within federal agency jurisdiction. *United States* v. *Leal*, 30 F.3d 577, 584 (5th Cir. 1994), cert. denied, 513 U.S. 1182 (1995). The term "knowingly" requires the government to prove that the defendant was aware the statement was false when she made it. *United States* v. *Steinhilber*, 484 F.2d 386, 389-390 (8th Cir. 1973); see also *United States* v. *Bakhtiari*, 913 F.2d 1053, 1059-1061 (2d Cir. 1990) (citing cases), cert. denied, 499 U.S. 924 (1991); *United States* v. *Oakar*, 111 F.3d 146, 158 (D.C. Cir. 1997) (Williams, J., concurring in part and dissenting in part). The term "willfully" in Section 1001 has been consistently interpreted to mean that the defendant acted "deliberately" in conveying false information to another, but it too does not require proof that the defendant knew that making the statement was illegal. See, *e.g.*, *United States* v. *Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). See also *Cheek* v. *United States*, 498 U.S. 192, 209 (1991) (Scalia, J., concurring) (noting the general rule that "willfully" "refers to consciousness of the act but not to consciousness that the act is unlawful"). Indeed, "defining the term 'willfully' in a Section 1001 prosecution to require a knowing violation of the law would circumvent the holding of *United States* v. *Yermian*, 468 U.S. 63, 68-76 (1984), that actual knowledge of federal agency jurisdiction is not required to prove a violation of § 1001." *United States* v. *Daughtry*, 48 F.3d

829, 831 (4th Cir.), vacated on other grounds, 516 U.S. 984 (1995).

This Court's decision in *Ratzlaf* does not support petitioner's contention that Section 1001 requires proof that petitioner knew her conduct was illegal. *Ratzlaf* involved the statutory prohibition against structuring currency transactions "for the purpose of evading" certain reporting requirements. The Court held that the criminal prohibition against "willfully violat[ing]" the anti-structuring provision required proof that the defendant knew that the structuring was unlawful. See 510 U.S. at 138, 149. The Court in *Ratzlaf* relied significantly on the consideration that the underlying provision required a "purpose of evading" the structuring law, so that "willfully" would be superfluous if read to require only deliberate action; the Court did not establish a per se rule that a conviction for "willful" acts requires proof that the defendant understood the illegality of his conduct. To the contrary, the Court recognized that the term "willful" is a "word of many meanings," and "its construction [is] often . . . influenced by context." *Id.* at 141. Indeed, the *Ratzlaf* Court explicitly reaffirmed the "venerable principle" that ignorance of the law is not a defense. *Id.* at 149. See also *Bryan* v. *United States*, 524 U.S. 184, 193-196 (1998) (declining to apply *Ratzlaf*'s definition of "willfully" to 18 U.S.C. 924(a)(1)(D)). Following *Ratzlaf*, the courts of appeals have continued to hold that the term "willfully" in Section 1001 means deliberate action, not knowledge that the conduct pursued is unlawful. *Daughtry*, 48 F.3d at 831-832; *United States* v. *Rodriguez-Rios*, 14 F.3d 1040, 1048 n. 21 (5th Cir. 1994) (en banc).

The fact that petitioner was charged under Section 2(b), which contains its own "willfulness" requirement,

does not alter the result. Section 2 does not itself define a substantive offense, but rather "describes the kinds of individuals who can be held responsible for a crime." *United States* v. *Armstrong*, 909 F.2d 1238, 1243 (9th Cir.) (citation omitted), cert. denied, 498 U.S. 870 (1990). Under Section 2(b), an individual who causes an intermediary to commit a crime is culpable himself, so long as he possesses the intent to commit the underlying offense. *United States* v. *Gabriel*, 125 F.3d 89, 98 (2d Cir. 1997); *United States* v. *Michaels*, 796 F.2d 1112, 1117-1118 (9th Cir. 1986), cert. denied, 479 U.S. 1038 (1987). Accordingly, "an indictment [under Section 2(b)] is sufficient if it alleges the criminal intent required for the substantive offense." *United States* v. *Cook*, 586 F.2d 572, 575 (5th Cir. 1978), cert. denied, 442 U.S. 909 (1979). Thus, as the court of appeals properly held, the requirement in Section 2(b) that the defendant "willfully cause[d]" an offense means only that the defendant intended to bring about the act constituting the crime, see, *e.g.*, *United States* v. *West Indies Transport, Inc.*, 127 F.3d 299, 307 (3d Cir. 1997), cert. denied, 118 S. Ct. 700 (1998), not that he must know that his conduct is unlawful, see, *e.g.*, *United States* v. *Michaels*, 706 F.2d at 1117-1118.

b. Petitioner correctly notes (Pet. 12) that the Third Circuit has held that, when the government proceeds under Sections 2(b) and 1001 in a federal election law prosecution, "[t]he intent element differs from that needed when the prosecution proceeds directly under Section 1001." *United States* v. *Curran*, 20 F.3d at 567. According to the Third Circuit, "a proper charge for willfulness in cases brought under Sections 2(b) and 1001 in the federal election law context requires the prosecution to prove that defendant knew of the treasurers' reporting obligations, that he attempted to

frustrate those obligations, *and that he knew his conduct was unlawful.*" *Id.* at 569 (emphasis added). The *Curran* court relied on what it perceived to be similarities between the currency reporting laws at issue in *Ratzlaff* and the federal election statutes. *Ibid.* The court did not explain how its view that Sections 1001 and 2(b) require proof of knowledge of illegality in the federal election law context can be squared with settled interpretations of both statutes, which establish that neither requires proof of knowledge of illegality in other contexts. See *United States* v. *Gabriel*, 125 F.3d at 101-102 (rejecting *Curran* and holding that "the considerations that led the *Ratzlaf* Court to interpret 'willfully' to require a knowing violation of the law under section 5322 are of little aid in interpreting section 2(b).").

The disagreement between the District of Columbia Circuit and the Third Circuit does not warrant further review. The court of appeals' ruling is interlocutory in nature, since its effect is simply to send the case back for trial in the district court. The district court has set a trial date of January 18, 2000, and it has indicated that it intends to swear in the jury at some time after January 24, 2000. Petitioner is in the same position she would have been if the district court had denied her motion to dismiss, thus permitting the trial to proceed and preserving petitioner's right to raise her claim regarding the correct construction of the statute on appeal of any resulting conviction. At that time, moreover, petitioner will be able to present all of her claims in a single petition, thus avoiding piecemeal litigation.

Premature resolution of the issue petitioner seeks to raise is particularly inappropriate. The question whether the government must show that petitioner

knew that her conduct was illegal is a question that concerns the proper framing of jury instructions in this case. In *Curran*, the Third Circuit addressed that question on appeal from a final conviction, where it had before it the full record of the trial and the precise jury instructions that had been given. See 20 F.3d at 569-570. The question presented in this case can similarly best be considered in a more concrete factual setting and with the benefit of the precise jury instructions that were given.

Finally, the difference in practice between the positions of the District of Columbia Circuit and the Third Circuit on this issue is not necessarily great. In a conduit contribution case brought under Sections 1001 and 2(b), both courts require the government to prove that the defendant caused, and intended to cause, a political committee to make a statement (that the named individual is the contributor) that the defendant knew to be false (in that the individual named as the contributor is not the true source of the funds). In order to prove the defendant's knowledge that that statement is false, the government ordinarily will have to show that the defendant knew that the political committee's listing of a particular person as the contributor means that that person was "the true source of the money," rather than "the person in whose name money is given." Pet. App. 10a. Thus, although the court of appeals in this case held that the government need not prove that the defendant knew that making that kind of false statement is illegal, in cases like this the government will ordinarily show that the defendant had some knowledge of the law in order to show the defendant's knowledge of falsity. That "preclude[s] the possibility that criminal penalties [will be] imposed on the basis of innocent conduct." *United*

States v. *Daughtry*, 48 F.3d at 832. And, in practice, the result may be similar to the proof required in the Third Circuit under *Curran*.

2. Petitioner argues (Pet. 17-22) that FECA is the exclusive means of enforcing compliance with its reporting provisions and thus repeals *pro tanto* the more general criminal provisions of the false statements statute, 18 U.S.C. 1001. Both courts below, consistent with every court of appeals that has addressed the issue (including the Third Circuit in *Curran*, see 20 F.3d at 565-566), correctly held that FECA does not repeal by implication the more general provisions of the false statements statute. Further review, especially in the interlocutory posture of this case, is therefore not warranted.

a. It is a "cardinal principle of construction that repeals by implication are not favored." *United States* v. *Borden Co.*, 308 U.S. 188, 198 (1939); see, *e.g.*, *Randall* v. *Loftsgaarden*, 478 U.S. 647, 661 (1986); *TVA* v. *Hill*, 437 U.S. 153, 189-190 (1978); *Morton* v. *Mancari*, 417 U.S. 535, 551 (1974). As the Court has explained, "[w]hen there are two acts upon the same subject, the rule is to give effect to both if possible." *United States* v. *Borden Co.*, 308 U.S. at 198. A legislative intent to repeal must be "clear and manifest," and it is not enough to show that a subsequent statute "cover[s] some or even all of the cases provided for by [the prior act]," *ibid.*, or that "the two statutes produce differing results when applied to the same factual situation," *United States* v. *Batchelder*, 442 U.S. 114, 122 (1979). That principle fully applies when conduct violates more than one criminal statute. Absent an "intent to repeal * * * manifest in the 'positive repugnancy'" between two overlapping criminal statutes, decisions as to "[w]hether to prosecute and what charge to file or bring

before a grand jury * * * generally rest in the prosecutor's discretion." *Id.* at 122, 124 (overlapping gun provisions). See also *United States* v. *Beacon Brass Co.*, 344 U.S. 43, 45-46 (1952).[3]

This case does not justify the invocation of either of the two exceptions to the rule severely disfavoring implied repeals—where there is "irreconcilable conflict" between the two statutes or where "the later act covers the whole situation of the earlier one and is clearly intended as a substitute." *Randall*, 478 U.S. at 661. There is no "conflict" or "positive repugnancy" between the FECA and the false statements statute: FECA imposes limits on contributions to candidates for federal office and requires political committees to keep records of their financial activities and file periodic reports with the FEC disclosing the identity of persons making contributions to the committee. The false statement statute at the time relevant to this case, see Pet. App. 5a n.2, proscribed the willful making of any materially false statement "in any matter within the jurisdiction of any department or agency of the United States." Both statutes define distinct criminal offenses and, by refraining from committing both offenses, individuals may easily comply with both statutes.

Nor does either statute cover "the whole situation" of the other. In order to prove a violation of Section 1001 (or of Sections 1001 and 2), the government has to

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[3] Petitioner's attack (Pet. 7-9, 24) on the evolution of the Department of Justice's approach to prosecution of election campaign violations, as reflected in successive editions of the Department manual, *Federal Prosecution of Election Offenses*, is misdirected. In fact, that evolution reflects cautious consideration, guided by accumulated experience and relevant legal developments, of how prosecutorial discretion might best be exercised in attacking criminal conduct in election campaigns.

prove that a false statement was made—a fact not necessary for proof of a criminal FECA violation under 2 U.S.C. 437g(d), which may simply involve the making of an illegal contribution. And Section 1001 applies to false statements within the jurisdiction of all federal agencies. In order to prove a violation of FECA's criminal prohibitions, by contrast, the government must prove a violation of a provision of the FECA, which of course is not necessary in a prosecution under Section 1001. Each statute thus prohibits substantial conduct that is not prohibited by the other.

Petitioner argues (Pet. 19-21) that Congress intended in enacting FECA to regulate all aspects of campaign finances, and that Congress therefore did not intend that campaign reporting violations would be prosecuted under the false statements statute. But the general rule disfavoring implied repeals has been applied even in situations where Congress has enacted subsequent legislation that may be characterized as "comprehensive" and has also established an administrative agency with regulatory jurisdiction in the area. In *Edwards* v. *United States*, 312 U.S. 473, 484 (1941), the Court summarily rejected an argument that the Securities Act of 1933 repealed the provisions of the mail fraud statute insofar as they covered securities, noting that "[t]he two can exist and be useful, side by side." Similarly, the Court in *United States* v. *Noveck*, 273 U.S. 202, 205 (1927), rejected an argument that a statute prohibiting anyone from "willfully attempt[ing] in any manner to defeat or evade" an income tax impliedly repealed the general perjury statute, insofar as that statute applied to perjurious statements on a tax return. The Court noted that there "was confessedly no express repeal" and that "it is clear that the two sections are not inconsistent." *Id.* at 206. Because the two

offenses "are entirely distinct in point of law, even when they arise out of the same transaction or act," the Court found that the conclusion that "Congress must have intended" an implied repeal "does not follow." *Ibid.* See also, *e.g.*, *United States* v. *Moore*, 423 U.S. 122, 138 (1975) (prosecution for drug distribution rather than for violation of registration provisions); *United States* v. *Tomeny*, 144 F.3d 749 (11th Cir. 1998) (misdemeanor false statement provision of the Magnuson-Stevens Fishery Conservation and Management Act did not preempt felony prosecution under 18 U.S.C. 1001); *United States* v. *Mitchell*, 39 F.3d 465, 471-476 (4th Cir. 1994) (provision of misdemeanors for violation of Endangered Species Act and Department of Agriculture regulations do not preclude felony prosecution for violation of those regulations under 18 U.S.C. 545), cert. denied, 515 U.S. 1142 (1995).[4]

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[4] See also *United States* v. *Parsons*, 967 F.2d 452, 456 (10th Cir. 1992) (false statements to Internal Revenue Service are prosecutable under either Section 1001 or the specific provisions of the Internal Revenue Code); *United States* v. *Bilzerian*, 926 F.2d 1285, 1299-1304 (2d Cir.) (antifraud provisions of Securities Exchange Act do not preclude prosecution under 18 U.S.C. 1001), cert. denied, 502 U.S. 813 (1991); *United States* v. *Jackson*, 805 F.2d 457, 459-464 (2d Cir. 1986) (misdemeanor provisions of 18 U.S.C. 510 do not preclude felony prosecution under general conversion statute, 18 U.S.C. 641), cert. denied, 480 U.S. 922 (1987); *United States* v. *Hansen*, 772 F.2d 940, 944 (D.C. Cir. 1985) (civil enforcement provisions of Ethics in Government Act did not repeal application of Section 1001 to false statements made in reports filed pursuant to its disclosure provisions), cert. denied, 475 U.S. 1045 (1986); *United States* v. *Brien*, 617 F.2d 299, 309-311 (1st Cir.) (antifraud provisions of the Commodity Futures Trading Act did not preempt or implicitly repeal the general mail and wire fraud statutes), cert. denied, 446 U.S. 919 (1980).

The cases relied on by petitioner (Pet. 18-19) for the proposition that "broad, general criminal statutes do not apply to an area specifically and comprehensively regulated by a targeted statute,"[5] are inapposite. In each of those cases, the court declined to find that the challenged conduct was covered by a "broad, general criminal statute," because the language of that statute did not "plainly and unmistakably" cover the conduct, *Dowling* v. *United States*, 473 U.S. 207, 229 (1985), whereas another, narrower statute squarely targeted such conduct. Unlike the situation in those cases, where there was "ambiguity concerning the ambit" of the broader statute, *ibid.*, there is no question that the false statements statute covers the false reports alleged in this case.

The two other courts of appeals that have considered the precise issue presented here have rejected the contention that campaign reporting violations may be prosecuted only under the misdemeanor provisions of FECA. See *United States* v. *Hopkins*, 916 F.2d at 218 (finding "no indication in the federal election laws that Congress intended them to supplant the general criminal statutes found in Title 18"); *United States* v. *Curran*, 20 F.3d at 566 (noting that "an examination of the legislative history of the Election Campaign Act and its amendments uncovers no express evidence that

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[5] See *Dowling* v. *United States*, 473 U.S. 207 (1985); *United States* v. *Enmons*, 410 U.S. 396 (1973); *Pipefitters Local Union* v. *United States*, 407 U.S. 385, 412 (1972); *United States* v. *Johnson*, 390 U.S. 563, 564-566 (1968); *NLRB* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 194 (1967); *NLRB* v. *Drivers Local Union*, 362 U.S. 274, 291-292 (1960); *United States* v. *Boffa*, 688 F.2d 919, 928-929 (3d Cir. 1982), cert. denied, 460 U.S. 1022 (1983); *United States* v. *DeLaurentis*, 491 F.2d 208, 214 (2d Cir. 1974).

the Act was intended to preempt the general criminal provisions under 18 U.S.C. §§ 2(b), 371, or 1001").

Petitioner argues (Pet. 21) that the false statement statute cannot be applied to her conduct, which she characterizes as expression protected by the First Amendment, because it "cannot survive strict, or even close, scrutiny." Petitioner argues that "[t]here is no compelling governmental interest" that could justify prosecuting conduit contributions as false statements under Section 1001, rather than as violations of the FECA. *Ibid.* Petitioner, however, is not charged with soliciting political contributions, which is activity protected by the First Amendment. Rather, she is charged in the false statements counts with using conduits to disguise the source of political contributions and thereby causing false representations on a matter within the jurisdiction of the FEC. Such conduct is not immunized by the First Amendment. See, *e.g.*, *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 340 (1974); see also *United States* v. *Barker*, 930 F.2d 1408, 1412 (9th Cir. 1991) ("There is simply no constitutional right to file a false claim."); *United States* v. *Daly*, 756 F.2d 1076, 1081 (5th Cir.), cert. denied, 474 U.S. 1022 (1985); *Clipper Exxpress* v. *Rocky Mountain Motor Tariff Bureau, Inc.*, 690 F.2d 1240, 1261 (9th Cir. 1982), cert. denied, 459 U.S. 1227 (1983). Moreover, although petitioner argues (Pet. 25) that the court of appeals' decision would "chill" legitimate contributors to political campaigns, ample protection for such legitimate contributors is provided by the uniformly recognized requirement that a defendant cannot be held liable for making (or causing) a false statement under Section 1001 unless the government can prove beyond a reasonable doubt that the defendant had actual knowledge of the statement's falsity. Cf. *New York Times* v.

Sullivan, 376 U.S. 254, 280 (1964) (libel against public official relating to official conduct requires proof of "knowledge that [statement] was false or * * * reckless disregard of whether it was false or not").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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